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ABSTRACT

As higher education institutions move into forms of distance learning enabled by technologies such as video conferencing and the Internet, the ownership of course materials becomes an issue. Who owns these materials, the school or the individual? This paper describes the issue, covers two different views on ownership (i.e., comparing online course materials to patented inventions and textbooks), and concludes by proposing how schools can use the ownership issue in recruiting faculty. By providing terms favorable to the instructor, schools might attract superior faculty who still wish to purse a profitable "second life" for their course materials. (Contains 16 references.) (Author/MES)

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Ownership Of Course Materials As A Tool In Faculty Recruitment

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Abstract:

As higher education institutions move into forms of distance learning enabled by technologies such as video conferencing and the Internet, the ownership of course materials rises as an issue. Who owns these materials, the school or the individual? This paper describes the issue, covers different views on ownership, and concludes by proposing how schools can use the ownership issue in recruiting faculty. By providing terms favorable to the instructor, schools might attract superior faculty who still wished to pursue a profitable "second life" for their course materials.

Ownership Of Course Materials As A Tool In Faculty Recruitment

Willie Ray Rayburn (mother of the primary author) taught college chemistry courses for forty years, up through the late 1980s. During those years, she gave countless lectures, repeating certain fundamental concepts again and again. Over time, she developed her own teaching methods, presentations, and materials. Some of her creative work remained only in her memory from one semester to the next. Other output took a more tangible form: mimeograph masters, type-written sheets, and hand-written notes stored in a series of filling cabinets. Whether on paper or in memory though, there was a limited market for this creative work - only the courses she taught.

Professor Rayburn was like most other instructors of that time. For the most part, an instructor's lecture "disappeared into thin air." Of course there were the tangible notes, but these had limited use and value beyond next semester's class unless the instructor wrote a textbook.

Technology has changed this situation. With the rise of new distance learning technologies such as videotape, compressed video, and web sites, the ownership of intellectual property has emerged as an institutional issue. The issue is unsettled, and there are conflicting views of who owns what rights. What may eventually emerge from this issue are policies that redefine relationships between higher education institutions and at least some of their faculty.

This paper addresses the ownership issue as an element in recruiting faculty. First, the paper reviews the issue itself and examines why it is important. Second, different perspectives on ownership are examined. In particular, the paper looks at two distinct philosophies on ownership. Last, the paper concludes by suggesting how universities can use this issue to their competitive advantage.

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Ownership at issue

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Higher education has been labor-intensive, localized, and technologically-limited for decades. This type of instruction was what was feasible to provide; other choices were limited. The classic view of instruction has described an instructor and a (small) group of students meeting together at the same time in the same place - a classroom with a chalkboard for writing and drawing.

Technology now challenges that classic view of teaching. Various distance learning technologies such as videotape, compressed video, and websites can break down the barriers of space and time. Such barriers are broken for those students, institutions, and instructors who want to break them down. Each party makes its own decision.

Students of course gain more choices for getting instruction and a degree, and in some cases they gain the opportunity to obtain a degree that they could not otherwise get. Students must make choices about whether they want a traditional instruction setting with the inconveniences in time, schedule, and expenses they would have to endure versus instruction delivered via technology. Instruction via distance learning brings its own issues such as quality and validity, but that is not the focus here.

Distance learning technologies are forcing choices on higher education institutions. With these technologies, schools can choose to improve the quality of their traditional instruction, seek out new markets, or gain economies of scale (Rayburn and Ramaprasad, 2000). Distance learning has been a hot issue for the past decade. Many schools have taken an aggressive approach. They seek to serve not just their traditional markets, such as those defined by geography; they pursue new markets with their existing resources (Marcus, 2000b). In addition, for-profit concerns like Kaplan are entering the higher education market (Littman, 1999). Whether new or old providers, they all want to take the instructional resource and leverage it. Many see packaged, easily-transportable instruction as "a scholastic gold mine" (Marcus, 2000a).

Of course, instructors make choices too. Since they "manufacture" the instruction and since it is a highly personalized commodity, they offer products that vary in quality, viewpoint, and depth. One difference today from even a decade ago is that many professors have created course materials that are easily stored and distributed. Less of their output "disappears into thin air" or gathers dust in a filing cabinet. Some view these new forms of course materials as valuable intellectual property that they can earn money from beyond their college salary. One option is taking the intellectual property to some other entity (Littman, 1999; Marcus, 1999). Another option, more entrepreneurial, has the instructor find a market (Glasser, 1999).

Either way, whether as part of an organization or on their own, those faculty viewed as being at the top of their profession now have more outlets for their intellectual property. Or do they? Perhaps a more relevant question is this: Who owns the online course materials, the school or the instructor? Some feel that a school=s faculty could also become part of its competition (Steinberg and Wyatt, 2000). The case of Arthur Miller and Harvard University illustrates this new, unresolved issue.

Arthur Miller is a member of the Harvard Law faculty. Aside from his faculty position, Miller has hosted his own TV program and contributed to other programs such as "Good Morning America" (Marcus, 1999). Recently, Miller committed to taping a series of videotaped lectures for the Concord University of Law, a new online program owned by Kaplan Educational Centers (*The Chronicle of Higher Education* On Line, 1999). Miller felt that his Concord work was an acceptable activity outside his Harvard professorship, just as his earlier work in TV was (Marcus, 1999). Miller and Concord contend that he is not teaching for Concord: he has merely supplied lectures on tape, something like publishing a book, and he has no contact with Concord=s students (Carnevale and Young, 1999). Interaction such as email

exchange with students and grading are handled by someone else at Concord (Marcus, 1999). A. Michael Froomkin of the University of Miami School of Law even described this new outlet for intellectual property as the A>Arthur-Miller-on-a-disk= model@ (Leibowitz, 2000, p. A45).

Harvard=s administration disagreed with Miller=s view. They felt that the videotaped lectures were a conflict of interest (Marcus, 1999). Robert C. Clark, dean of Harvard Law, saw the situation as Miller providing Acourse content to another academic institution without permission@ (*The Chronicle of Higher Education* On Line, 1999). Regardless of the outcome, this issue has prompted Harvard to review its ground rules for outside faculty work (Carnevale and Young, 1999; Marcus, 1999).

A brief survey of articles shows other interesting cases that involve the ownership of course materials. At Pima Community College in Arizona, Randy Accetta developed a course six years ago for television broadcast but no longer teaches that course. However, Pima still uses his videotaped lectures and has another instructor administer the course (Carnevale and Young, 1999). Accetta reported that he received no compensation for the subsequent use of the tapes, and he felt that if he taught a future distance learning course he would seek more favorable terms for himself (Carnevale and Young, 1999). Recently at Drexel, a debate involving the faculty and administration has started over who will own the rights to online courses offered by Drexel (Young, 1999).

At present, no consensus solution seems to have evolved about ownership. However, the next section presents a framework for understanding different views about ownership.

Two views: patents versus textbooks

A recent article (Young, 1999) offered two views about who owns online courses and the material in them. These two views are based by analogy on methods of handling two other types of intellectual property produced by faculty.

In one view, online course materials are like patented inventions; schools own the patent rights but perhaps share revenue with faculty developers (Young, 1999). For instance, suppose a chemistry professor uses school lab facilities to develop and patent a new innovation, one that has a commercial market. The school would likely own the patent but perhaps share some financial reward with the professor. An argument in favor of this view would be that the online course is resource-intensive. The school may provide equipment and staff support to faculty to develop the online course (Young, 1999).

In the other view, online course materials are like a textbook; faculty generally have full ownership of a text they write (Young, 1999). For instance, suppose a history professor writes a new textbook. Typically, that professor would retain full ownership of the text. An argument in favor of this view would be that the online course materials are merely an expanded, latter-day form of what used to go into a text. In his case, Arthur Miller argued that there was no difference between his videotaped lectures and other materials such as textbooks (Marcus, 1999).

These two views, the patent versus the textbook, seem to frame the debate on ownership. Both base their arguments on how schools and faculty have dealt with older forms of intellectual property. Whether one view or the other or perhaps some compromise between them will become a standard policy remains an open question. However, the issue of ownership may provide a tool in faculty recruitment. The next section explores this idea.

Online ownership as a tool in recruiting faculty

Higher education institutions compete with each other in many areas. One area where schools compete is in the labor pool. There has always been a competitive market for Astar@ faculty, at least among elite schools or ones that aspire to elite status. Among the ways that schools seek to lure desired faculty are money (Lewington, 1999a; Schneider, 2000), the chance to build a program (Lewington, 1999a and 1999b), research support (Lewington, 1999a), higher morale / better atmosphere (Schneider, 2000), improved facilities (*The Chronicle of Higher Education* Give & Take, 2000), and recruiting candidates as a group (Heller, Mangan, and Basinger, 2000).

Schools that want to attract superior faculty may add favorable ownership terms to the above listing as a way to enhance what they offer. In a competitive marketplace, a school that offered better terms on the ownership of online course materials could use that to its advantage when recruiting faculty. This advantage could be especially true when the school's package was otherwise no different from or was perhaps weaker than what competing schools offered. Such an incentive could attract faculty who would contribute greatly to the school but who still wished to pursue a profitable "second life" for their course materials. In a job package, ownership slanted toward the faculty could overcome weaknesses elsewhere, especially in salary. Some even suggest that to get *existing* faculty to innovate schools need to give them an incentive to go online - such as rights favorable to the professor (Carnevale and Young, 1999; Young, 1999).

Institutions that wish to pursue an aggressive recruiting strategy should identify their competition and analyze what they offer. Smart administrators and search committees will always do this. But now ownership of course materials is another angle to add to the recruiting mix. Schools need to (1) decide how to handle the ownership of online courses and materials and (2) know what their rivals do. A school should know either to gain an advantage in the market or to defend against a competitor who uses favorable terms as a recruiting tool.

Regardless of the outcome, schools must address the issue of who owns online courses and materials. The issue may decide how much the existing faculty develop distance learning programs and how the school fairs in getting the faculty it wants. Ownership may well move from merely a personnel issue to a competitive issue. Schools that plan now may avoid future problems and perhaps gain an advantage.

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